

Amend Section 63.1 of the Revenue and Taxation Code to reinstate the parental signature requirement on the parent-child change in ownership exclusion claim form.

Source: Legal Division and Property Taxes Department

Last year, Senate Bill 1184 (Chap. 613, Stats. 2001) amended Section 63.1 of the Revenue and Taxation Code to reduce the number of signatures required on claims for the parent-child change in ownership exclusion. Previously all transferors (generally the parents) and all transferees (generally the children) were required to sign the claim form. SB 1184 deleted the requirement that the transferors sign the claim and allowed, where there are multiple transferees, the signature of only one transferee.

Two unintended consequences of eliminating the transferor (parental) signature have been identified. The first occurs in situations where the parents own, in addition to a principal place of residence, more than one million dollars of other property. The parent-child exclusion is limited to the first one million dollars of property claimed. Since the parent, or the executor of the estate, is no longer required to sign the claim form, the parent can not direct which property or child is to receive the property tax benefits of the exclusion when property holdings will be subject to the one million dollar cap. Instead, the *first* sibling(s) to file a claim will receive the exclusion. Reinstating the signature requirement will give the parent, or the executor of the estate, the ability to determine how best to use the one million dollar limit.

The second unintended consequence occurs in situations where the parent sells or transfers their principal residence to their child with the intention of transferring the base year value from that property to a replacement property. Revenue and Taxation Code Section 69.5 provides property tax relief by allowing a person who is over the age of 55 or disabled to sell his/her principal place of residence (original property) and transfer, under certain conditions, the base year value of that property to a qualifying replacement residence (replacement property). One of the conditions is that the sale of the original property must trigger a reassessment to its current market value. (There are two exceptions to this requirement: (1) the new buyer is transferring their base year value from their original property because their home had been damaged in a disaster (Section 69 and 69.3); or (2) the new buyer is over 55 or disabled and is also claiming a base year value transfer under Section 69.5). If a child files a claim for the parent-child exclusion, which no longer requires the parental signature, then the parent is ineligible to receive a base-year value transfer since the original property will not be reassessed. Reinstating the parental signature and adding to the form a declaration that the parent will not claim a base year value transfer on that property will preserve the parent's right to claim, if desired, a base year value transfer.

Senate Bill 1184 was sponsored by the California Assessors' Association (CAA). Board staff has conferred with the CAA on the unintended consequences of eliminating the parental signature and they are agreeable to its reinstatement.

Section 63.1(d) of the Revenue and Taxation Code is amended to read:

(d) (1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(A) A written certification by the transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate, signed and made under penalty of perjury that the transferee is a grandparent, parent, child, or grandchild of the transferor and that the transferor is his or her parent, child, or grandparent. In the case of a grandparent-grandchild transfer, the written certification shall also include a certification that all the parents of the grandchild or grandchildren who qualify as children of the grandparents were deceased as of the date of the purchase or transfer and that the grandchild or grandchildren did or did not receive a principal residence excludable under paragraph (1) of subdivision (a) from the deceased parents, and that the grandchild or grandchildren did or did not receive real property other than a principal residence excludable under paragraph (2) of subdivision (a) from the deceased parents. The claimant shall provide legal substantiation of any matter certified pursuant to this subparagraph at the request of the county assessor.

(B) A written certification by the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate, signed and made under penalty of perjury that the transferor is a grandparent, parent, or child of the transferee and that the transferor is seeking the exclusion under this section and will not file a claim to transfer the base year value of the property under Section 69.5.

(C) A written certification shall also include either or both of the following:

(i) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(ii) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor that is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, the social security number of each eligible transferor, and the names of the eligible transferees of that property.

(~~ED~~) If there are multiple transferees, the certification and signature may be made by any one of the transferees, if both of the following conditions are met:

(i) The transferee has actual knowledge that, and the certification signed by the transferee states that, all of the transferees are eligible transferees within the meaning of this section.

(ii) The certification is signed by the transferee as a true statement made under penalty of perjury.

(2) If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee from the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (d) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.